

USSN 09/538,562

Page 8

REMARKS

This response is intended as a full and complete response to the Office Action mailed August 12, 2005. Claims 1-26 are pending, of which claims 16-26 are withdrawn. Claim 1 is amended. The amendments contain no new matter and are fully supported by Applicants' whole original specification, including original claims and drawings, including page 17, line 13 to page 18, line 15, page 20, line 28 to page 21, line 16, page 25, line 12 to page 28, line 10, Figures 7 and 10-13, processor 1014, mux 1016, P, M). Applicants traverse all of the rejections in the Office Action and respectfully request reconsideration and passage of the claims to allowance for the following reasons.

Election/Restrictions

The Office Action states that claims 16-26 were withdrawn from further consideration. Applicants reserve the right to subsequently file divisional applications in order to prosecute claims 16-26.

Claims 1-15 are patentable over Gordon under §102

The Office Action rejected claims 1-15 under 35 U.S.C. 102(b) as being anticipated by Published International Application WO 98/31115 for Gordon et al. ("Gordon").

According to MPEP §2131, to anticipate a claim under §102, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim,

427212_1

USSN 09/538,562

Page 9

but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Gordon fails to teach every element of claims 1-15. There are many specific distinctions believed to render the claims patentable over Gordon.

Claim 1 recites:

"A system for providing access to an array of guide pages from an interactive program guide within constraints imposed by limited bandwidth available in a distribution network, the system comprising:
a distribution control center coupled to the distribution network;
a session manager in the distribution control center for monitoring and controlling usage of demand-cast stream bandwidth within the distribution network; and
a transport stream generator including a processor and a multiplexer, the transport stream generator for receiving demand-cast stream usage information from the session manager, for using said information to control which demand-cast streams associated with guide pages of said array of guide pages are multiplexed into a transport stream, and for generating the multiplexed transport stream for transmission to a plurality of terminals via the distribution network." (Emphasis added.)

The language of claim 1 is patentably distinguishable from Gordon, because Gordon discloses a different system architecture, i.e., the "system for interactively distributing information services" in Gordon is structurally different than the claimed system for providing access to an array of guide pages from an interactive program guide within constraints imposed by limited bandwidth available in a distribution network. Specifically, Gordon fails to disclose the claimed transport stream generator including a processor and a multiplexer, where the transport stream generator receives demand-cast stream usage information from the session manager and generates the multiplexed transport stream.

The Office Action erred in attempting to equate the "digital video modulator (DVM) module 202" of Gordon with the claimed transport stream generator. (Gordon, Figure 2.) The "DVM module 202" of Gordon has different components and different functions.

The claimed transport stream generator has different components, because the claimed transport stream generator includes a processor and multiplexer, while the "DVM module 202" of Gordon includes an optional

427212_1

USSN 09/538,562

Page 10

packetizer 206, a QAM modulator 208, and an upconverter 210. (Gordon, Figure 2). In Gordon, Figure 2, in its entirety, shows the components of the "video system manager 106" of Figure 1. In Figure 2 of Gordon, "multiplexed streams 104" are input to a "stream distributor 200" which is coupled to the "DVM module 202". As a result, because the streams are already multiplexed, the "DVM module 202" does not include a multiplexer, as in the claimed transport stream generator.

Furthermore, the "DVM module 202" does not multiplex, but rather modulates, i.e., the "DVM module generates four digitally modulated channels that are independently frequency agile." (Gordon, page 12, lines 32-33). Instead, the "server 102" of Figure 1 provides multiplexed data streams, not the "DVM module 202". (Gordon, Figures 1 and 2, page 11, lines 18-34.) But it is the "DVM module 202" that is coupled to the "session control manager 220" in Figure 2 of Gordon, not the server 102. Consequently, the server 102 of Gordon is not capable of one function of the transport stream generator, namely receiving demand-cast stream usage information from the session manager and using that information to control which demand-cast streams associated with guide pages of the array of guide pages are multiplexed into the transport stream. Therefore, there are different components and functions in Gordon than the claimed transport stream generator. Therefore, claim 1 is patentable over Gordon under §102.

Claims 2-15 depend, directly or indirectly, from claim 1 and, thus, inherit the patentable subject matter of claim 1, while adding additional elements and further defining elements. Therefore, claims 2-15 are also patentable over Gordon under §102 for at least the reasons given above with respect to claim 1.

USSN 09/538,562

Page 11

CONCLUSION

For the foregoing reasons, Applicants respectfully request reconsideration and passage of the claims to allowance. If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Lea A. Nicholson or Eamon J. Wall, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

1/12/06

E J Wall
Eamon J. Wall, Attorney
Reg. No. 39,414
(732) 530-9404

Patterson & Sheridan, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702